Reilly Tar

US EPA RECORDS CENTER REGION 5
506954

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

United States of America,

Plaintiff,

and

State of Minnesota, by its Attorney General Warren Spannaus, its Department of Health, and its Pollution Control Agency,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.; Housing and Redevelopment Authority of St. Louis Park; Oak Park Village Associates; Rustic Oaks Condominium, Inc., and Philips Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corporation,

Defendant,

and

City of Hopkins,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corporation,

Defendant.

File No. 4-80-469

REPLY MEMORANDUM OF REILLY TAR & CHEMICAL CORPORATION IN RESPONSE TO THE SUPPLEMENTAL MEMORANDA IN OPPOSITION OF PLAINTIFF UNITED STATES OF AMERICA AND INTERVENORS STATE OF MINNESOTA AND CITY OF ST. LOUIS PARK (SUPER-FUND REPLY MEMORANDUM)

INTRODUCTORY COMMENT

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (referred to in the most recent United States brief as "CERCLA" and in the most recent Minnesota PCA brief[1/] as "Superfund") was, as all parties concede, a last-minute compromise by a lame duck Congress. Although it had been in Congress for some three years, the House version was rejected except for the designation "H.R. 7020" which was retained because revenue measures must originate in the House. The Senate version, after several hastily-negotiated amendments, was presented to the House on a "take it or leave it" basis, with a letter from Senators Stafford and Randolph, the Senate sponsors, warning that if the bill were returned to the Senate, it would die, and that "it would now be impossible to pass the bill again, even unchanged." See Appendix A to PCA Superfund brief, 1980 CQ Almanac p. 593. Under those circumstances, it is perhaps not surprising that while some of the provisions of Superfund are clear, some of its provisions are very unclear. In these circumstances, we see our responsibility as officers of the Court to help the Court determine the meaning and effect of the Act. We will not follow the approach of the PCA and utilize adjectives (such as "convoluted") to characterize their arguments. We believe the court is not assisted by such characterizations.

This reply brief will not address each issue discussed in the plaintiffs' Superfund briefs because we deem our own supplemental memoranda in support of Reilly Tar's motions to dismiss to contain a sufficient discussion of many of the issues.

1/ The United States and State briefs referred to were dated December 28, 1981 and addressed those parts of Reilly's motions to dismiss dealing with claims asserted under Superfund. Along with the brief of St. Louis Park of the same date, these will be referred to herein as "Superfund" briefs.

The Relationship Between §§104, 105, 107, 111 and 112

Congress has not been as explicit as it might have been in pointing up the relationship between §104 which is entitled "Response Authorities," §105 which is entitled "National Contingency Plan," §107 which is entitled "Liability," §111 entitled "Uses of the Fund" and §112 entitled "Claims Procedure." We believe that the sections must be read together and not as though each were a separate congressional enactment. The governmental plaintiffs disagree. In fact, on page 18 of its Superfund brief the PCA refers to "...the independence of the liability scheme of §107 from the Response Fund program of §§111-112...." As we indicated in our prior Superfund briefs, we believe that the only claims against private parties which are assertable under Superfund are those which "may be asserted against the Fund pursuant to section 111." We will demonstrate that this conclusion is a sound one, in spite of the somewhat murky provisions of the Act.

In the first place, we believe that, except for "natural resource damages," as distinguished from "response costs," Superfund - as its name implies - was not intended primarily to create new causes of action between private parties, or between a state or city and private parties. It was intended to create a fund, financed by the taxpayer in part but principally by the chemical industry, with which the federal government could take action to clean up hazardous waste deposits even if the "responsible" party was unknown or not negligent. Thereafter, the fund, or claimants who are eligible under §112 because they have incurred "response costs," could seek reimbursement from private parties. Appendix A to the PCA brief, the 1980 CQ Almanac, supports Reilly's position completely in this respect. It says:

> "As cleared, H.R. 7020 gave the federal government the authority and the money to act in emergencies to clean up spilled or

> dumped chemicals threatening public health or the environment. The government could then sue the persons or companies responsible for the damage - if they could be found - to recoup the cleanup costs." Id. at 584.

Even more important is the interrelationship of the sections themselves. If §107 were read all alone, it would seem to create almost absolute liability (subject only to the "act of God" and other exceptions in that section) not only to the United States, but also to states, and to "any other person" who has incurred response costs consistent with the national contingency plan. But §107 cannot be read alone.[2/] It was not enacted alone. It was part of a comprehensive bill. Section 112 is the section dealing with "claims" for response costs - by private persons, by states, and by the Attorney General on behalf of the fund. As indicated by the letters from the Minnesota PCA and the City of St. Louis Park attached as Appendices 1 and 2, it is §112 under which the PCA and St. Louis Park state their claims. The controlling and limiting language of that section is

> "(a) All claims which may be asserted against the Fund pursuant to section 111..."

The section then goes on to provide that such claims shall first be presented to the owner or operator of the facility (if he is known). However, the prerequisite for all claims is that they be assertable against the Fund under §111.

We turn then to §111 to see which claims are assertable against the Fund. The basic criteria of §111 tells us that the Fund shall only be used to pay response costs which were "incurred

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2/ "The general words used in the clause...taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal - because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute...and the objects and policy of the law..." Stafford v. Briggs, 444 U.S. 527, 535 (1980), quoting from Brown v. Duchesne, 19 How. 183, 194 (1857).

pursuant to section 104 of this title..."[3/] And, as we have previously demonstrated and will discuss again briefly hereafter, there are prerequisites to reimbursable Presidential action under §104, most notably the requirement that all removal and remedial actions - i.e., all response costs - be "consistent with the National Contingency Plan."

Finally, §107 itself, the "liability" section, provides that the persons therein described are liable for "response costs," including (1) costs of removal or remedial action incurred by the federal or state governments "not inconsistent with" the NCP, (2) any other necessary response costs incurred by other persons, consistent with the NCP, and (3) natural resource damages. It does not establish liability for all "damages" as that term is commonly used by courts and by lawyers. Liability thus is only triggered if there is a "response cost" meeting the criteria of §104 or natural resource damages determined under §111(h).

The PCA, at the top of page 16 of its Superfund brief, takes completely out of context the quotation from S. Rep. 96-848. That quote does not say that the "claims" section is not to limit the "liability" section. The entire quotation is as follows:

> "Subsection 6(a)(2)(A) restricts use of the Fund for remedial actions unless the State containing the source of the release or discharge first gives adequate assurance that certain conditions, if applicable, will be met. Three of the five conditions require State (or local government) cost sharing. The State must pay at least 10 percent of the costs of remedial actions in all cases. If, however, the facility or site was used for the disposal of hazardous substances and was owned by the State or a local government at that time, then at least 50 percent of the costs of removal must be recovered by the Fund from the State and/or the local government. If these removal or remedial actions will require continuing maintenance, then the State must assume responsibility for performing these maintenance activities. However, the State may obtain compensation from the Fund for 90 percent of these costs during the authorized life of the Fund. The State may also be required to first agree to two other conditions. If offsite storage, destruction, treatment or secure

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3/ Note that the Fund may also be used for the rehabilitation of natural resource damage, see §111(c), but not until Federal and State officials have established a plan for said use, after public hearings. See §111(i).

> disposition is required as part of the remedial actions, then the State is responsible for assuring the availability of any necessary offsite, disposal facilities and for assuring that these facilities comply with the requirements of subtitle C of the Solid Waste Disposal Act. Finally, if State employees or State contractors or subcontractors are to be utilized in government response, then the State is required to assure that the program for health and safety protection of response personnel required under subsection 6(a)(1)(P) will be complied with. Nothing in this section is intended to reduce or apportion the liability of an owner or operator of a site under section 4 of the bill." S. Rep. No. 96-848, 96th Cong., 2d Sess. 52-53.

Only the last sentence was quoted in the PCA's brief. However, it is obvious, when this entire discussion is read, that the Senate Committee is merely saying that the commitment on the part of a state to pay a portion of the costs of remedial action does not reduce or apportion the liability of the ultimate wrongdoer. This quotation does not justify reading §107 as though §§104, 105, 111 and 112 do not exist.

The limitation contained in §303 which permits collection of taxes from the chemical industry only until 1985 or until $1,380,000,000 is collected from that source establishes nothing except that Congress thought that there should be some finite limit to the Fund. Congress is obviously free to replenish the Fund. There is no indication that it was meant to be temporary.

Thus, when read together, and carefully considered, the provisions of the Act fall into a rather neat pattern. The liability of a private party for response costs and natural resource costs and natural resource damage is to pay claims which might be made against the Fund. There is no validity to the argument that §107 can stand by itself. It is clear that the NCP is a prerequisite to liability. It is also clear that all §104 response actions must be cost-effective and balanced. See, e.g., 126 Cong. Rec. S14982 (daily ed. Nov. 24, 1980) (remarks of Sen. Dole); id. at S15007 (remarks of Sen. Helms and Sen. Stafford); id. at S15008

(remarks of Sen. Simpson and Sen. Stafford). Accordingly, these §104 and §105 criteria apply when seeking to recover from private parties as well as when determining whether to make an expenditure from the Fund. The 1981 dialogue between EPA Administrator Anne Gorsuch and Representative Florio (cited on the sixth unnumbered page of the St. Louis Park Superfund brief) is wishful thinking; and not part of the true legislative history of the Act.

The distinction which the governmental plaintiffs attempt to make between "removal" actions and "remedial" actions may or may not be a valid one. If the Court will refer to Attachments A and B to the United States brief it will see two letters from the United States Attorney (undoubtedly dictated by the EPA). In the letter of February 25, 1981, the United States invites Reilly Tar to develop "a remedial action plan"[4/] which would cover, "at a minimum" certain listed activities, which, the plaintiffs briefs tell us, are the same activities which formed the basis for the funding by the Federal Government under Superfund. It is interesting that the United States is now contending that these activities were not really remedial actions but were really "removal" actions. It is also interesting that the PCA (PCA brief, p. 19) contends that these activities are both "remedial" actions and "removal" actions. We agree with the PCA that the definition of "remove" in §101(23) and the definition of "remedy" in §101(24) could both be applied to the investigatory activities engaged in and for which both plaintiffs seek reimbursement from Reilly. And if that is true, the limitations in section 104 on "remedial" actions should apply.

We submit that the fine distinction which the plaintiffs would like to make which would result in a holding that "remedial" actions may not qualify for a Superfund claim in the absence of

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[4/] The letter refers to the desired investigation as a "remedial action plan" four separate times.

the §104 prerequisites but that "removal" actions do qualify is a post-legislative interpretation of the Act created by the EPA for this, and perhaps other, litigated cases. We also submit that, in the setting of this litigation, the EPA is not better qualified than this Court to provide insight into the meaning of the Act.

The Absence of the Hazardous Substance National Contingency Plan

The United States and the responding intervenors contend that their claims for Superfund response costs brought pursuant to Superfund §§107 and 112, 42 U.S.C.A. §9607 and 9612, are not premature despite the absence of a national contingency plan ("NCP" or the "plan") revised as required by Superfund §105, 42 U.S.C. §9605. But the liability provision upon which their claims are based, Superfund §107(a)(4)(A), is quite clear on this point: liability is only for "costs of removal or remedial action . . . not inconsistent with the national contingency plan." Moreover, reference to the plan in § 104, which is part and parcel of the statutory scheme, is stated several times in the affirmative, not in the negative. It states that "response actions" (which trigger liability under §107) must be "consistent with the national contingency plan." There must be a plan against which a response action can be meaningfully compared before liability for costs can be determined and hence a valid cause of action based on that liability can exist.

It is argued by both the United States and the responding intervenors that the definition of the NCP contained in §101(31), 42 U.S.C. §9601(31), which states that the phrase "means the national contingency plan published under §311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act," legitimates their claims. But this definition must be read in the context of the whole statute. See note 2, supra.

Section 105 mandates the revision of the plan "to . . . effectuate the responsibilities . . . created by this Act." Promulgation of a revised plan is thus, by the very terms of the statute, necessary to effectuate the cost liabilities created by the statute.

The United States and the intervenors point to a passage at the end of §105 as support for their argument. That passage states that: "Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan." From this and from similar statements in the legislative history the Court is asked to infer the intent of Congress that such actions could also be taken prior to publication of a revised plan. But this argument proves too much. It shows that, at most, Congress recognized some emergency actions might have to be taken before the revised plan could be promulgated. Not surprisingly, there is no similar statement even arguably authorizing claims for costs before the determination of liability therefor is made possible by the revised plan. While exigent circumstances might require an immediate response to a true emergency, no such exigencies require that a cost action be filed before liability for costs can be meaningfully determined according to congressionally mandated standards. It is candidly conceded by the responding parties that final promulgation of a revised NCP may yet be some time away, but that is neither the fault of Reilly nor within the contemplation of Congress, which directed the President to revise the NCP within 180 days of the December 11, 1980 enactment of Superfund. See §105.

The State contends that the terms of the old NCP, published at 40 C.F.R. §1510 (1981) demonstrate that it can be

used for evaluating liability for costs under §107, but in fact they demonstrate the opposite. Section 1510.3, for example, defines the scope of the old plan. By its very terms, it only "is in effect for the navigable waters of the United States and adjoining shorelines, for the contiguous zone, and the high seas beyond the contiguous zone. . . ."[5/] There is no allegation, as indeed there could not be, that the alleged intrastate groundwater pollution at the St. Louis Park site falls within the scope of the old plan.

Moreover, that Congress felt compelled to detail in §105 of Superfund the minimum revisions required shows both the inadequacy of the old plan to address questions under Superfund and congressional awareness thereof. Indeed, Congress specifically required that a separate section of the revised NCP be designated as "the national hazardous substance response plan," which part is specifically to address itself to such things as the appropriateness of removal and remedial actions within the scope of Superfund. See, e.g., Superfund §105(3)[6/]. To impute to Congress an intent to have the old NCP apply for Superfund cost liability determinations is to impute to Congress an intent to utilize provisions which it explicitly recognized as inadequate for those very same determinations. Rather than impute such irrationality to Congress, this Court should give effect to the expressed congressional

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5/ Thus, even if the old NCP remains in full force and effect, cf. Superfund §302(b), 42 U.S.C.A. §9642(b), by its terms it has no effect for responses to intrastate groundwater pollution.

6/ The disjunctive definition of the NCP in §101(31) thus can be seen as a direction to refer to either the old or revised plan as is appropriate under the circumstances. While liability for response costs incurred in a situation within the scope of the old plan may appropriately be determined by comparing the actions taken against that plan, newly created liability for response costs in situations beyond the scope of the old NCP must be determined by reference to the revised NCP with its broadened scope. In this way, there is neither a "gap" created in existing regulatory schemes, cf. remarks of Sen. Randolph, quoted at 13 of the United States' Superfund brief, nor premature enforcement of newly created liabilities.

desire to have the revised plan give meaningful effect to the liabilities created by the Act.

Natural Resource Damages

The State also contends that its claim for natural resources damages is not premature despite the absence of a revised national contingency plan and the required designation of officials and standards for determining natural resources damages. Its argument rests in large part on the notion that, because the required assessment procedures and standards may serve to benefit a claimant by creating a rebuttable presumption on behalf of a claimant, the determinative standards and procedures need not be promulgated before a valid natural resources damages claim can be asserted. But the regulations for determining damages are not merely to aid claimants; by establishing standards for determining compensable damages, they will provide a yardstick against which to determine if the injuries alleged are in fact natural resources damages compensable under Superfund.[7/] As such, they form part of the elements of a valid natural resources damages claim under Superfund. As with the other liabilities created by

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7/ The Court is directed to the following exchange between Senators Simpson and Stafford, parts of which have already been cited by both Reilly (see Supplemental Statement of Points and Authorities in Support of Defendant Reilly Tar & Chemical Corporation's Motion to Dismiss the Complaints of the Intervenors at 16) and the State (see State's Superfund brief at 24 n. 37 and 27):

> MR. SIMPSON. Mr. President, I should also like to pursue the measure of damages which would be used in determining liability for injury to natural resources. The committee report on S. 1480 had stated, as does this substitute, that costs for restoration and replacement would not be the limit for recovery. I am aware that the methods for assessing resource damages is early in its development as a precise science. However, I believe that some guidance must be given by Congress in this area since the definition of natural resources in section 101(b) covers a very broad array of economic and esthetic values.
>
> MR. STAFFORD. Mr. President, let me respond to the Senator's concern by saying it is our intention that no damages for injury to natural resources be pursued until a restoration plan is developed and that rehabilitation and replacement of natural resources be accomplished in the most cost-effective manner possible. Our position has not changed on this point.

126 Cong. Rec. S 15008 (daily ed. Nov. 24, 1980) (emphasis added).

Congress under Superfund,[8] when Congress created the §107 liability for natural resources damages, it also circumscribed that liability by requiring the promulgation of standards and procedures to be used in determining such damages. In the words chosen by Congress, the NCP and the regulations to be issued after its promulgation are to "effectuate the responsibilities . . . created by this Act." §105.[9] Congress contemplated that the standards would be promulgated before claims based on liabilities under the Act would be effective.[10]

8/ Despite the State's protestations to the contrary, the liability created under Superfund for natural resources damages is in fact novel. Such liability for natural resources damages as Congress created in the Outer Continental Shelf Lands Act and the Clean Water Act cited by the State is necessarily limited by the scope of those acts, neither of which even arguably applies to the instant situation. Moreover, in each of the cases cited by the State in footnote 32 of its Superfund brief, unlike the instant case, the state involved had an ownership-type interest in the land or the coastal or tidal waters polluted. See Puerto Rico v. SS Zoe Colocotroni, 628 F.2d 652 (1st Cir. 1980), cert. den., 450 U.S. 912 (1981); Maine v. M/V Tamano, 357 F. Supp. 1097 (D. Me. 1973), Maryland v. Amerada Hess Corp., 350 F. Supp. 1060 (D. Md. 1972); California v. S.S. Bournemouth, 307 F. Supp. 922 and 318 F. Supp. 839 (C.D. Cal. 1970). Dept. of Envt'l Protection v. Jersey Central Power & Light Co., 124 N.J. Super. 97, 308 A.2d 671 (1973). And the court in Puerto Rico v. SS Zoe Colocotroni expressly recognized that, inasmuch as Puerto Rico owned all of the land involved, it did not have to - and did not - decide what it termed the "extremely difficult substantive issue" of whether a state has a cause of action for environmental harm where the land in question is not owned by the State. 628 F.2d at 670 & 671 n. 20.

9/ Contrary to the State's contention, there is neither a "gap" in existing authority nor any implied repeal of §311(f)(4) and (5) of the Clean Water Act. Whereas newly created liability must await the promulgation of the required standards to be effective, existing liability governed by old regulations issued pursuant to §311 remains governed by those regulations until they are superseded by new regulations. See Superfund §302(b).

10/ That the standards are necessary prerequisites to an effective claim obviates the State's concern with its claim being time barred, since, as the State has quoted, "a statute prescribing the time in which suit must be filed . . . can never operate prior to the time a suit would be permitted." See State's Superfund brief at 25, quoting Dalton v. Dow Chemical, 280 Minn. 148, 154, 158 N.W.2d 580 (1968).

Section 106 and Executive Order 12316

In asking this Court to rule its claim based on Superfund §106 valid, the United States seeks to ignore the plain language of Executive Order 12316, 46 Fed. Reg. 42237 (Aug. 20, 1981) and the plain language of §106(a) itself. There are two statutory prerequisites to a §106 action: (1) a Presidential determination that there may be an imminent and substantial endangerment to the public health or welfare, and (2) a Presidential decision that the Attorney General shall be required to commence an action seeking appropriate relief. In section 3 of the Executive Order, it is provided generally that "the functions vested in the President by Section 106(a) of the Act are delegated to the Administrator [of the EPA]." However, section 8(b) of the Order provides:

> "Notwithstanding any other provision of this Order, the President's authority under the Act to require the Attorney General to commence litigation is retained by the President."

We agree that this provision is somewhat unprecedented. But this is an unprecedented statute. When the Act was in the House, then-Representative David Stockman opposed the broad emergency powers (§106) given to the EPA to clean up releases or threatened releases from chemical sites. He argued that Congress should refrain from creating in EPA "an additional regulatory monster with unlimited power to clean up any dump site in the country." See 1980 CQ Almanac at 588 (Appendix A to State's Superfund brief) and H.R. Rep. No. 96-1016, 96th Cong., 2nd Sess. 70-75, reprinted in [1980] U.S. Code Cong. and Ad. News 6119, 6145-6150. It is reasonable to assume that when the President delegated to EPA certain powers but specifically declined to delegate the power under §106 to require the Attorney General to commence an action, the President meant what he said. In any event, that is the explicit effect of the Order.

We vigorously object to any procedure under which the government would be permitted to submit documents to the Court to sustain its legal argument without showing them to us. In camera inspections are utilized by courts to determine whether documents are privileged. If they are privileged, they need not be surrendered to the opposing party, but they are then not used by the Court in determining the merits of the argument, factual or legal. If a party uses part or all of a privileged communication, he waives the privilege.

CONCLUSION

For all of the reasons set forth in this reply brief and Reilly's prior briefs in support of its motions to dismiss, the motions to dismiss should be granted.

Dated: January 8, 1982.

Respectfully submitted,

DORSEY & WHITNEY

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Attorneys for Reilly Tar & Chemical Corporation

Minnesota Pollution Control Agency

March 20, 1981

Mr. Thomas J. Ryan
President
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware St.
Indianapolis, Indiana 46204

Re: Notice of Claim under Section 112 of Public Law 96-510

Dear Mr. Ryan:

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510, provides for strict liability for persons who dispose of hazardous substances. This liability extends to costs of removal or remedial action and to natural resource damages resulting from the disposal of hazardous substances. As described in the Complaint of the United States and the Complaint in Intervention of the State of Minnesota in the pending lawsuit U.S. v. Reilly Tar and Chemical Corporation, Civil No. 4-80-469 (D. Minn., filed Sept. 4, 1980), Minnesota alleges that the disposal of hazardous substances by your company in St. Louis Park, Minnesota, has caused and continues to cause natural resource damages and has caused and continues to cause Minnesota to incur costs for removal and remedial action.

In accordance with Section 112(a) of P.L. 96-510, Minnesota hereby presents its claim against Reilly Tar and Chemical Corporation for these natural resource damages and costs of removal and remedial action. Your company can satisfy this claim by agreeing to undertake the tasks and obligations outlined in paragraphs two through seven of the "Prayers for Relief" in Minnesota's Complaint in Intervention. A copy of the Complaint in Intervention is enclosed herewith.

APPENDIX 1

Our agencies are prepared to work with your company on a comprehensive plan to address the soil and ground water contamination resulting from the disposal of coal tar and coal tar derivative substances at the St. Louis Park facility.

Sincerely,

/s/ Louis J. Breimhurst
LOUIS J. BREIMHURST
Executive Director
Minnesota Pollution Control Agency

/s/ Duane Johnson
DUANE JOHNSON
Deputy Commissioner
Minnesota Department of Health

Enc.
cc: Edward J. Schwartzbauer
Thomas E. Reiersgord
Stephen Shakman
William G. Miller
Thomas K. Berg
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REC'D MAY 1 9 198

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May 11, 1981

Mr. Thomas J. Ryan, President
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware Street
Indianapolis, Indiana 56204

Re: Notice of Claim Under §112 of Public Law 96-510

Dear Mr. Ryan:

Pursuant to Section 112(a) of Public Law 96-510, the City of St. Louis Park hereby presents its claim to you as the owner and operator of a facility which disposed of a hazardous substance or substances within the City of St. Louis Park. Under Section 107 of the Act, your company is responsible for all necessary costs of response, including removal or remedial action to abate the danger from the disposal of hazardous wastes. This includes the cost of identifying, investigating, and taking enforcement and abatement action against the release of a hazardous substance. Section 111(c).

The City makes as its claim all of the matters contained in the requests for relief in the Complaint of the United States, the Complaint in Intervention of the State of Minnesota, and the Complaint in Intervention of the City of St. Louis Park in the pending lawsuit of U.S. v. Reilly Tar and Chemical Corporation, Civil No. 4-80-469 (D.Minn., filed September 4, 1980).

Sincerely,

Wayne G. Popham, City Attorney
City of St. Louis Park

WGP/mp
cc Edward J. Schwartzbauer
Stephen Shakman
Francis X. Hermann
William Miller